No. 60.

UNITED STATES CIRCUIT COURT of APPEALS

NINTH CIRCUIT.

SAMUEL COULTER,

Plaintiff in Error,

vs.

JOHN A. STAFFORD,

Defendant in Error.

Writ of Error to the United States Circuit Court, for the District of Washington.

BRIEF OF PLAINTIFF IN ERROR.

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IN THE

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Defendant in Error.

This is a Writ of Error to the Circuit Court of the United States, for the District of Washington.

The action is to recover real estate situate in the City of Seattle, King County, State of Washington.

The plaintiff in the lower Court, and plaintiff in error here, Samuel Coulter, deraigns title by mesne conveyances from a patentee of the United States, and established such title to the satisfaction of the Court, as is shown by the opinion, page 27 record, page 44 printed record :

"On the trial objections were made to certain deeds offered in evidence by the plaintiff, and my decision of the questions so raised as to the validity of said deeds was reserved. I now overrule said objections and give the plaintiff the full benefit of all the evidence offered in his behalf, and I hold that the plaintiff is the owner of the land and entitled to a judgment as prayed in his complaint,

unless the defendant acquired a valid title by the tax sale and sheriff's deed, or unless the action is barred by the Statute of Limitations."

The defendant relies entirely on a tax deed as appears by the following

Bill of Exceptions.

Be it remembered that on the 4th day of June, 1891, the above entitled cause came on for trial, at which time it was duly stipulated by the parties thereto, by their respective attorneys, that said cause should be tried by the Court and without intervention of a jury, and that all questions of fact and of law should be submitted to and tried by the Court,

Thereupon the plaintiff to maintain his case and establish and prove a perfect and legal title in himself to the property described in the complaint in this action, offered in evidence certain deeds and oral testimony of the facts found by the Court as to said title, to which the defendant objected and the same were by the Court submitted in evidence notwithstanding said objections.

Whereupon plaintiff rested his case, and thereupon the defendant, to defeat plaintiff's alleged title, offered in evidence the instrument hereto annexed marked "Ex. A," which is the tax deed referred to in the findings of fact made by the Court herein and is the only deed introduced in evidence by the defendant to sustain his title.

Plaintiff objected to the offer and introduction of said instrument for the reason that the same is incompetent, irrelevant and immaterial and because it was not a conveyance of said premises or any part thereof and because the notice of redemption required by statute was not given.

Said objection was then and there denied and overruled by the Court and the instrument was ad-

mitted and read in evidence to which ruling of the Court and the admission and reading in evidence of said instrument the plaintiff duly excepted and said exception was then and there allowed by the Court.

There was no evidence admitted or offered tending to show that any notice such as was required by section 1 of the act of the legislative assembly of the Territory of Washington, entitled "An act to amend section 2,934 of chapter 226 of the Code of Washington Territory, relating to conveyance of real estate sold for taxes," approved February 3, 1886, was ever served upon the person or persons as by said act required, and for the further reason that no such notice as provided for by said act was ever published in a newspaper printed or published in the county of King or elsewhere, or that any attempt was ever made to serve or publish said notice, but the facts in reference thereto as found by me are as set forth and contained in the findings of fact made and filed in this case, which is hereby referred to.

Whereupon plaintiff in rebuttal introduced the official records in the office of the Auditor of King County, Washington, which records showed that no affidavit of a compliance of said Section 1 of said act of the Legislature of the Territory of Washington, or of any attempted compliance therewith, was ever filed in the office of said Auditor or ever by him entered upon the records of his office. Inasmuch as the foregoing facts do not appear of record they are hereby incorporated in this Bill of Exceptions which is presented to me this 3d day of June, 1892, and settled and signed by me on said date.

Upon the presentation of the foregoing Bill of Exceptions by plaintiff, defendant by his attorneys Battle & Shipley, duly objected to the settlement of the same on the ground and for the reason

that plaintiff has not complied with 26 nor rule 55 of this Court.

I hereby certify that said rules 26 and 55 were adopted by this Court as general rules of practice prior to the date of the trial of this cause, and were then and ever since have been in force and are as follows, viz :

Rule 26. Exceptions how taken—Where exceptions are taken, or there is a demurrer to evidence, the party shall have the right and shall not be required to prepare at the trial his Bill of Exceptions, or demurrer and statement of evidence, but merely reduce such exceptions to writing, or make a minute of the demurrer to the evidence, as the case may be, and deliver it to the Judge. The bill or demurrer shall, within ten days after the termination of the trial, be drawn up, filed and a copy served on the attorney of the adverse party, who, within five days after, may prepare. serve and file amendments thereto ; and in default thereof, the right to propose amendments shall be deemed waived, in which case, within five days thereafter, the proposed bill may be presented by the moving party to the Judge for allowance. If amendments are served and filed within the time allowed, they shall be deemed assented to by the party proposing the bill, and may in like time and manner be presented to the Judge for allowance, unless the said party, within three days after receiving the copy of such amendments, shall notify the opposing attorney of his dissent, and that at a time and place specified, not less than two nor more than five days distant, he will present the proposed bill and amendments to the Judge for settlement, and in that case the bill shall be so presented. In all cases where a party proposing a Bill of Exceptions fails to present his bill or bills and the proposed amendments to the Judge for allowance or settlement, within the time limited as

aforesaid, his Bill of Exceptions shall be deemed abandoned, and his right thereto waived. In the case of the absence of the Judge at the time for presenting a Bill of Exceptions for allowance or settlement, the party proposing it may upon one day's notice to the opposing attorney, when amendments have been proposed, otherwise without notice, and within the times limited for so presenting it, direct the clerk of the Court to transmit by mail or express to the Judge, for allowance or settlement of the proposed bill or bills and amendment as the case may be, together with such other papers as may be deemed necessary or convenient to the Judge in settling the same, and it shall be the duty of the clerk, the expenses thereof having been first paid by the party, to forward the same to the Judge in pursuance of such directions, and to file a memorandum of his action, together with the date, among the papers in the case. Either party may transmit with such papers a memorandum, stating his points, and referring to such portions of the evidence or record as in his judgment may conduce to a correct settlement of the bill of exceptions; or, upon stipulation of the parties, the proposed bill and amendments may be retained by the clerk and be by him delivered to the Judge upon his return.

Rule 55. Act may be done after time.—The Court or a Judge thereof, may, in the interest of justice and upon such terms as are just, allow any act to be done after the time prescribed by these rules or may enlarge the time allowed therefor.

Notwithstanding the foregoing objections, I hereby settle the same as a bill of exceptions, as hereinabove recited.

Dated this 3d day of June, 1892.

C. H. HANFORD.

Judge.

The Assignment of Errors is as follows :

Assignment of Errors.

The plaintiff above named comes now and files this his assignment of errors, and says on the record and proceedings of the above entitled cause, and also in making and entering the judgment therein against the plaintiff and in favor of the defendant above named there is manifest error in this, to-wit :

1st. The Court entered judgment in said action against this plaintiff and in favor of defendant as follows :

" Wherefore by reason of the laws and findings aforesaid, and on motion of Battle & Shipley, attorneys for defendant, for judgment in accordance with said findings, it is hereby ordered, adjudged and decreed that plaintiff, Samuel Coulter, take nothing by his said action, and that defendant, John A. Stafford, have judgment against plaintiff for the land in controversy in this action, and all costs and disbursements herein incurred," and in so deciding the Court committed an error.

2nd. The Court in its fifth finding of fact in said case found as follows :

" I also find that the said two and one-half (2½) acres were equalized as required by law, and the taxes for which the same was sold, as hereinafter stated, were levied upon the same as required by law, which taxes became delinquent and unpaid, and J. H. McGraw, the then sheriff of King County, Washington Territory, on the 7th day of May, 1883, at the time, place, in the manner and upon the notice required by law, and in all respects in conformity with law for the said unpaid and delinquent taxes of the year 1882, and the charges, costs and expenses lawfully chargeable against said two and one-half acres, sold the same to one

H. Jacobs, who was the purchaser thereof for a sum sufficient to pay the said taxes so levied upon and assessed against the same and penalty, interest, costs and all charges whatsoever lawfully chargeable against the said two and one-half acres, and that it was necessary to sell the whole of said two and one-half acres to bring a sufficient sum to pay the said taxes on the whole thereof so assessed to the said Albert Carr, as above stated," and in so finding and deciding the Court committed error.

3rd. That the Court in its sixth finding of fact in said case found as follows:

"The amount so bid by the said H. Jacobs was paid by him to the said sheriff, who in his official capacity as such sheriff thereupon executed and delivered to the said Jacobs a certificate of purchase, dated on the day of the sale, describing the said two and one-half acres so purchased, stating that the same was sold for taxes of the year 1882, the date of sale, the amount paid therefor and the name of the person assessed for said taxes, and in all particulars contained and set forth the facts and recitals required by law," and in so finding and deciding the Court committed error.

4th. The said Court in its 9th finding of fact found as follows:

"That said J. H. McGraw, then Sheriff of said King County, Washington Territory, and as such Sheriff did on the 14th day of July, 1886, by a deed bearing said date, make, execute and deliver to defendant, John A. Stafford, a tax deed for two and one-half (2½) acres, which was duly signed, sealed and acknowledged by the said McGraw, as Sheriff as aforesaid, and witnessed by two witnesses, and in all particulars complied with and contained the requirements of the law; and wherein the Territory of Washington is party of the first part, and defendant, John A. Stafford is party of the second part,

and wherein is conveyed, to the said John A. Stafford, by the said party of the first part, his heirs and assigns forever, the said two and one-half (2½) acres, and all the right, title and interest as well in law as in equity, of the said Albert Carr, and all owners known or unknown, of, in or to the said two and one-half (2½) acres, which two and one-half (2½) acres is in said deed described as being in the County of King, Territory of Washington, and particularly described as follows: Northeast quarter of southwest quarter of northwest quarter of southeast quarter, section 20, township 25 north, of range 4 east, containing two and 50-100 (2½) acres; and I further find that said description is in all particulars the same as the description thereof given in said assessment roll, as appears from a certified copy thereof introduced in evidence, with the sole exception that the words "north of" preceding the word and figure "range 4" and the word "east" succeeding said word and figure are not contained in the description of said land as the same appears upon said certified copy thereof, and I find as fact, of which the Court will take judicial knowledge, that said King County is wholly north of the parallel and wholly east of the meridian (Willamette Meridian)," and in so finding and deciding the said Court committed error.

5th. The Court in its 10th finding of fact found as follows, to wit:

"That all the requirements of the law from the said assessment by the Assessor up to and inclusive of the execution of the deed, were complied with in the assessment, sale, and execution of said deed," and in so finding and deciding the Court committed error.

6th. The Court in its 10th finding of fact in said case found as follows:

"That the said deed so executed and delivered to defendant was duly filed for record and recorded on the 17th day of July, 1886, in the office of the Auditor of King County, Territory of Washington," and in so finding and deciding the Court committed error.

7th. The Court in its 11th finding of fact in said case found as follows :

"At the time of the making of said sheriff's deed to defendant the said two and one-half (2½) acres was wild, unoccupied and unimproved land and of little value, and defendant, acting under and by virtue of said tax deed, and on or about the 1st day of October, 1886, took actual, quiet peaceable and adverse possession thereof, and during the said year 1886, enclosed the same with a fence and began the work of clearing and improving the same, and in the early part of the year 1887, erected his residence house thereon, and has ever since, on or about the 1st day of October, 1886, been in the open, notorious, actual, quiet, peaceable, continuous, exclusive and adverse possession of that portion of said two and one-half (2½) acres in controversy herein, holding and claiming the same under said deed adversely to the plaintiff, his grantors and all other persons, for a period of more than three years next preceding the filing of plaintiff's complaint herein ; and still holds said exclusive, adverse and actual possession, claiming the same adverse to plaintiff and all others, and has exclusively paid all taxes levied and assessed thereon from the said date of purchase thereof to the present time, and in good faith and before the institution of this suit erected upon said land permanent improvements of the value of nine hundred and thirty dollars," and in so finding and deciding the Court committed error.

8th. The said Court in its third conclusion of law in said case found as follows :

"I further find as a conclusion of law that the said sale of said land by said sheriff for the delinquent and unpaid taxes of 1882, and the subsequent failure of said Carr, or his grantee, to redeem said land from said sale, and the execution by said J. H. McGraw of said deed to defendant operated to divest the said Albert Carr and his grantee of all the right, title and interest in and to said land which either of them may have had, and vested in defendant a good and perfect title thereto, so far as concerns said Albert Carr, or his said grantee, Burke, or plaintiff," and in so finding and deciding the said Court committed error.

9th. The Court in its fourth conclusion of law in said case found as follows :

"I also find that said possession of defendant of the land in controversy for more than three years bars the right of plaintiff to bring this suit, and if he had not already acquired a good and perfect title thereto, as found in the preceding paragraph herein, that he acquired such title as against the said Carr or his said grantee, Burke, or plaintiff, by virtue of his said possession thereof," and in so finding and deciding the said Court committed error.

10th. The Court in its fifth conclusion of law found as follows;

"That defendant is entitled to, and it is hereby ordered that judgment herein be entered in his favor and against the plaintiff for the land in controversy and all the disbursements herein incurred, and that plaintiff take nothing by his said action," and in so finding and deciding the Court committed error.

11th. The Court upon the trial of the above-entitled action, overruled and denied plaintiff's objections, introduction in evidence of the "Tax Deed," a copy of which is marked "A" and ap-

pears in and is made a part of the bill of exceptions in this case, and the Court also, then and there, permitted said tax deed to be read in evidence against plaintiff's objection thereto, and in so deciding and holding the Court committed error.

12th. In construing the statute of the State of Washington in relation to the execution of tax deeds and the notice of redemption to be given prior to the execution of such deeds, which statute is entitled, "An act to amend Sec. 2934 of Chapter 226 of the Code of Washington Territory, relating to conveyances of the real estate sold for taxes, approved February 3, 1886," and reads as follows:

SECTION 1. That Section 2934 of Chapter 226, relating to the conveyance of real estate sold for taxes be and is hereby amended to read as follows:

SECTION 2934, If within three years after the sale of any tract or lot of land for taxes, the same has not been redeemed, as provided by law, the lawful holder of a valid certificate of sale shall be entitled to a deed to the land described in said certificate, and upon the surrender of said certificate to the sheriff and the payment of all subsequent taxes against said land, if there be any, and the redemption of said lands from all former sales to the county, not yet redeemed, if there be any, the sheriff must make to the purchaser or his assignee, a deed of the property in fee simple, running in the name of the Territory of Washington, and reciting in the deed substantially the matters contained in the certificate and that no person has redeemed the property during the time allowed by law for its redemption; *Provided*, however, that no holder or owner of such certificate shall be entitled to a deed of the lands or

lots so purchased, until the following conditions have been complied with, to wit: Such holder or owner shall cause to be served a written or printed notice of such purchase on the person or persons in actual possession or occupancy of such tract or lot of land, and also the person in whose name the same was taxed or assessed, if upon diligent inquiry he can be found in the county, at least sixty days prior to the expiration of the three years aforesaid, in which notice he shall state when he purchased the land or lot, the description thereof, for what year taxed or specially assessed, and when the time of redemption will expire. If no one is in the actual possession or occupancy of such tract or lot of land, and the person in whose name the same was taxed or assessed, upon diligent inquiry cannot be found in the county, then the holder or owner of said certificate shall publish such notice in some newspaper published in the county, and if no newspaper is published and printed in the county, then in the nearest newspaper that is published in this Territory to the county seat of the county in which such tract or lot of land is situated, which notice shall be inserted three times, the first not more than five months and the last not less than sixty days before the time of redemption shall expire. And the holder or owner of such certificate or his agent shall, before he shall be entitled to such deed, make an affidavit of his having complied with the conditions of this action, stating particularly the facts relied on, as such compliance, which affidavit shall be delivered to the sheriff and which shall by him be filed in the office of the county auditor, and by him entered on the records of his office, and carefully preserved among the files of his office, which record and affidavit shall be *prima facie* evidence that such notice has been given. The auditor's fee for recording such affi-

davit to be paid by the holder of such certificate, and the printer's fee for publishing such notice to be paid by the party redeeming before deed is made, not to exceed two dollars for each tract or lot of land. Any person swearing falsely in such affidavit shall be deemed guilty of perjury and punished accordingly.

SEC. 2. All acts and parts of acts in conflict with this act are hereby repealed.

SEC. 3. This act shall take effect and be in force from and after its approval by the Governor.

"Appproved Febuary 3, 1886."

The Court ruled and decided that the tax deed offered in evidence was operative to convey title without the giving of the notice to the person or persons in the actual occupancy of said land or the person in whose name the same was assessed or taxed, required in said section of the statute, and that the defendant need not prove that such notice or any notice provided in said statute had been given or attempted to be given, and that the sheriff of King County had authority to execute said deed without said notice having been given, and in so holding and ruling the Court committed error.

13th. The Court in the trial of said cause, in construing said statute above referred to, held that and decided that as said statute went into effect February 3, 1886, and the term of three years from the date of the tax sale, within which said property might be redeemed, expired on the 6th day of May, 1886, that only ninety-one days intervening between the going into effect of said act and the expiration of said three years within which said property might be redeemed and that such period of ninety-one days was "not sufficient to afford reasonable opportunity for compliance with the provisions of said act," and that consequently defendant was not obliged to give the

notice provided by said statute, and that said notice need not be given, and that the execution of the tax deed by the sheriff without said notice having been given or attempted to be given, was sufficient to convey title and to start the statute of limitations running; in all of which holding and deciding the Court committed error.

14th. The Court in trial of said case held and ruled that the plaintiff in this action was barred from prosecuting the same by the statute of limitations of the State of Washington, for the reason that previous to the bringing of this action more than three years had elapsed from the recording of the tax deed introduced in evidence and marked exhibit "A" in the bill of exceptions herein; and in so holding and ruling the court committed error.

Wherefore, the said plaintiff Samuel Coulter prays that the said judgment of said Circuit Court of the United States for the District of Washington be reversed, and for judgment in said case as prayed for in plaintiff's complaint.

The foregoing Assignment of Errors may be epitomised as follows:

The pretended tax deed was admitted in evidence against plaintiff's objections, which were:

1st.

The Assessment Roll and Delinquent Tax List do not show any description of this property. The N. E. ¼ of S. W. ¼ of N. W. ¼ of S. E. ¼ Sec. 20, T. 25, Range 4, containing two and one-half acres, does not show whether it is north or south range, or east or west of the Willamette Meridian, and describes no property at all.

2d.

The notice to redeem provided for in the Act

of February 3d, 1886 was not given, and consequently the pretend deed is void.

3d.

The pretended deed is void upon its face because not executed in the name of the Territory of Washington.

The statute referred to in objection No. 2, above, is set out in full in the twelfth assignment of error *supra*.

Argument.

(Objection No. 1).

The land in controversy in this action was never assessed to any one, or assessed at all. The omission of the description of the *range* in the assessment roll and delinquent tax list is fatal. A proper description in the assessment roll is jurisdictional, and cannot be cured by any act of the Legislature in the nature of a Statute of Limitations, or otherwise.

Marx vs. *Hanthorn*, 30 Fed. Rep. 579;
Strode vs. *Wascher*, 17 Oregon, p. 50;
West vs. *Duncan*, 42 Fed. Rep. p. 432.

The cases of *Strode* vs. *Wascher*, and *Marx* vs. *Hanthorn*, cited above, arose under the Oregon statute, which at that time made the tax deed *prima facie* evidence of title, and further declared that "such presumption and such *prima facie* evidence *shall not be disputed or avoided* except by proof of:

1st. Fraud in the assessment, or collection of the tax.

2d. Payment of the tax before sale or redemption after sale, and the payment or redemption was prevented by the fraud of the purchaser.

3d. That the property at the time of the sale was not liable.

4th. That no part of the tax was levied or assessed upon the property sold."

In *Strode* vs. *Wascher* the only error complained of was that the property was assessed and lumped together with other property. And the Court, under the above statute, set aside the sale. In passing on the question (17 Oregon, 54) the Court says :

" I think, therefore, that at least the invalidity of the assessment and levy are *always* open to inquiry in an action relating to the title to the property claimed under a tax deed, and that a statutory enactment precluding such inquiry *would be a nullity.*"

The case of *Marx* vs. *Hanthorn supra* arose under the same statute. In that case the only error complained of, was that in *the delinquent list* published, the owner's name was printed Ida J. Hanthorn instead of Ida F. Hauthorn, and the Court set aside the deed, and Judge Deady, in deciding the cases, says as follows :

" The true rule upon the subject seems to be that the Legislature may make a tax deed conclusive evidence of the regularity of the prior proceedings as to all non-essentials, or matters of routine which rest in mere expediency; acts which need not have been required in the first place, as the affidavit of the Sheriff to the delinquent list, and which the Legislature may by a curative act excuse when omitted. But the owner of property cannot be precluded from showing the invalidity of a tax deed thereto by proving the omission of any act essential to the due assessment of the same, the levy of a tax thereon and the sale thereof on that account. As to the performance of these

acts and the facts necessary to constitute them the deed can only be made *prima facie* evidence."

(Cooley Taxation, 521.)

This decision is directly in point in the present case. A statute making a tax deed *conclusive* evidence is but the same thing as a statute *limiting* the time within which an action may be brought to set the deed aside. From the expiration of the time limited the deed is *conclusive* evidence of the regularity of the sale. It is calling the same effect by another name. If a mistake of Ida F. Hanthorn for Ida J. Hauthorn in the *delinquent tax roll* may be opened up under the statute, what will the Court say as to an error in the *assessment roll*, the very groundwork upon which the tax is to be levied if at all, which error consists in the entire omission of the *range* in the description of property assessed according to Government surveys?

In *West* vs. *Duncan*, 42 Fed. Rep., p. 432, he Court construed the following provision of a tax law: "And said sale and the title acquired thereunder shall only be set aside and held for tnaught upon proof satisfactorily made to the proper Court trying the title *that the taxes for which said proberty was sold had actually been paid off and discharged to the prober officer before the the sale took place.*"

Surely that law is as strong as the statute involved in this case. And yet the Court held that the owner could go back of the deed and show want of notice.

See also *Martin* vs. *Barbour*, 34 Fed. Rep. p. 712;
Blackwell Tax Titles, Sec's. 919, 920 and 927.

It may be explanatory here to notice the manner in which this objection is passed upon by the lower Court. Record page 28, printed Record page 45.

"In connection with this objection it is proper to note, as it is a matter of common knowledge, that King County is wholly north of the parallel and east of the meridian which are the initials of Government surveys of all the land therein."

With all due deference to the opinion of the distinguished gentleman who decided this case, we submit that this reasoning assumes the very thing in controversy, and, having assumed it, draws a conclusion from it. Judge Hanford's syllogism is this:

1st.

This land is in King County.

2d.

All land in King County is north of the parallel and east of the meridian.

3d.

Therefore this land is north of the parallel and east of the meridian.

The conclusion is logical enough if we admit the premises. *But there is aboslutely nothing in the record to show that this land is in King County.* And that is *the* point of our contention.

(Objection No. 2.)

This brings us to the consideration of the 2d objection to this deed, viz: No notice to redeem was ever served on the owner by Stafford as provided by the act approved February 3d, 1886. By the Act of February 3d, 1886, section 2,934 of the Code as it existed up to that time was repealed *in toto*, and the new law substituted forit.

After the passage of this Act there was no law providing for the executing of a deed to the purchaser at a tax sale except this law as amended. It is the duty of the Court to construe a statute so that all its provisions may stand and be effective as intended by the Legislature. This Act is an exact copy of section 2,934 up to the proviso. It provides that after the expiration of three years from the day of sale the purchaser may have his deed, provided "*That no holder or owner of such certificate shall be entitled to a deed of the lands or lots so purchased until the following conditions have been complied with.* This is inhibitory and was so intended by the Legislature. The Sheriff could no more execute a deed without having the proof of service of the notice provided for in this section before him than he could execute it before the three years expired. This is emphasized further in the section when, after setting out what the notice shall contain and the manner and mode of proof of service, the Act says further: "And the holder or owner of such certificate or his agent *shall before he shall be entitled to such deed* make an affidavit of his having complied with the conditions of this section, stating particularly the facts relied on as such compliance, which affidavit shall be delivered to the Sheriff, and which shall by him be filed in the office of the County Auditor, and by him entered on the records of his office and carefully preserved among the files of his office, which record and affidavit shall be *prima facie* evidence that such notice has been given."

The whole object and the sole object of this amendment was to provide for the service of this notice. If the Court should hold that the notice need not be given it naturally annuls the statute of 1886. The Legislature did a vain thing when it passed this Act. If a deed is good after the three years *without* the service of this notice of

what effect is the service of the notice? And if this deed is good without any notice being served all deeds are good. Counsel rely on sections 2,937, 2,938 and 2,939, as curing the defect of want of this notice. But in our judgment such is not the case.

These sections to the extent necessary to give force and effect to the Act of 1886 are amended by implication.

Speaking on this subject Endlich, on his work on the Interpretation of Statute, says: (Sec. 200, p. 268.)

"The implied negative referred to in the preceding section is to be found indeed whenever the later statute clearly intends to prescribe the only rule which is to be accepted as governing the case provided for, and where it does so it repeals the earlier law by implication. If the coexistence of two Acts or provisions would be destructive of the object for which the latter Act was passed the earlier would be repealed by the later."

Sections 199 and 201 are to the same effect and equally clear. If this law is correct as furnishing a rule whereby statutes may be *repealed* altogether it is much more easy of application when we seek only an amendment or modification.

Section 2,927 of the Code of Washington is as follows: "*Such* tax deed *duly acknowledged and proven* is (except as against actual fraud) conclusive evidence of the regularity of all other proceedings, from the assessment of the Assessor inclusive up to the execution of the deed."

We must read this section in the light of section 2,934 as amended, and construe it accordingly. When it says "*such* tax deed," therefore, it means such deed as is demanded by Sec. 2,934 as *amended*; that is, one executed after giving the notice therein

provided for. And when this section provides that when such deed is "duly acknowledged or proven" we know that it refers to the proof required by section 2,934 as amended, without which it would not be executed at all. The statute therefore is simple enough. When *such* a deed is executed and proven, it is conclusive of the regularity of the matters therein set out. A deed not *such* a deed and *not so proven* is conclusive of nothing, and is not contemplated by the statute.

Following down further on, read section 2,938, which says: "A tax deed *executed under this act* conveys to the grantee the absolute title to the lands &c," and understand the words "*Executed under this act*" to mean executed under the provisions of section 2,934 as amended, *i. e.* after notice to the owner. The words *executed under this act* are restrictive in their operation, and exclude the consideration of *all* deeds not so executed.

Section 2,939 becomes plain also as at present in the code; it reads as follows: "Any suit or proceeding for the recovery of lands except in case where the taxes have been paid or the land redeemed as provided by law, shall be commenced within three years *from the time of recording the tax deed of sale*, and not thereafter except by the purchaser at the tax sale."

The "Tax deed of sale" mentioned in said section means "The tax deed of sale executed as provided by section one (1) of the Act approved February 3, 1886."

It can mean nothing else; there can be no other tax deed of sale, as none is provided for by the statute.

Such a construction of this law gives effect to every portion of it. Any other construction would render void the Act of February 3, 1889.

The statute of limitations then, provided for by section 2939, does not begin to run until the recording of the deed to be executed according to the provisions of the Act of 1886, which is now the law and the only law on the subject; nor are we without authority for such a construction.

The case of *Oullaham* vs. *Sweeny*, 21 Pacific Rep. 960, is directly in point. Up to the year 1885 a purchaser at a tax sale could, after the expiration of a year from the date of sale, obtain a deed *without any notice to the owner.* In March, 1885, this law was changed and the purchaser was required to give the owner thirty days' notice. Sweeney purchased at a tax sale before the Act of 1885 was passed, and obtained his deed after the passage of the act *and without giving the notice required by the Act of 1885.*

The case is parallel with this in every respect, and in that case the Court held the deed void.

In deciding it the Court says: "We think this amendment was intended to apply to all applications for deeds after it took effect. The counsel argue however that it is not within the power of the Legislature to extend the time for redemptions on sales previously made, because they say such an extension impairs the validity of a contract. It may be assumed for the purpose of the case that the Legislature cannot make an absolute extension of the time for the redemption of property previously sold. But this has not been attempted to be done by the provisions in question. The purchaser may still obtain his deed at the expiration of twelve months, provided he takes the proper precautions. If he does not take them it is his own fault, and he alone is responsible for the consequences.

"The question is, therefore, whether the Legislature had the power to require notice to be given of applications for deeds of sale made before the passage of the law. This precise point was decided in *Curtis* vs. *Whitney*, 13 Wallace, 68, in which the Court upheld the validity of the law. We think that this decision is sound in principle. The change affected the remedy merely which was within the control of the Legislature."

The case referred to above, *Curtis* vs. *Whitney*, is a Wisconsin case. Curtis bought at a tax sale May 11, 1865. She received a deed May 12, 1868. On April 10, 1867, the Legislature changed the law and provided that in *all* cases where land *had been or might be* sold the owner should receive a three months' notice to redeem, as provided for in the Washington statute.

The question raised in the Supreme Court was as to the power of the Legislature to pass this act, and did it impair the obligation of contracts,

The United States Supreme Court affirmed the constitutionality of the statute, and say (page 71 13 Wallace U. S.): "For such legislation demanded by the public good, however it may retroact on contracts previously made and enhance the costs and difficulty of performance or diminish the value of such performance to the other party, there is no restraint in the Federal Constitution so long as the obligation of performance remains in force. In the case before us the right of plaintiff to receive her deed is not taken away nor the time when she would be entitled to it postponed."

The late case of *Gage* vs. *Stewart* is directly in point and arose in Illinois. In the statement of facts the Court says (p. 703, 19 North Eastern Rep.):

"The deed in controversy bears date *March 9, 1881*, and is based upon a sale for taxes *made October 21, 1880.* The law providing for the giving of notice was passed *May 31, 1879.*" The Court upholds the constitutionality of the law and among other things says (p. 703): "That compliance with the statute is a prerequisite to the making of a valid tax deed has been so repeatedly held that no discussion thereof is necessary."

Gage vs. *Bailey*, 100 Ills. 520.
Furr vs. *Taylor*, 107 Ills. 159.

We ask the Court's careful consideration of this opinion. (Gage vs. Stewart) It is on an exactly similar statute, and they have a statute of limitation in Illinois the same as ours.

In the case of the *State* vs. *Hendbonson*, 24 Wisconsin, p. 189, the same doctrine is announced.

The giving of the notice is *jurisdictional.* Where under a statute providing for such notice a deed is made without the giving of the notice the statute of limitation does not begin to run.

Slyfield vs. *Barnum*, 71 Iowa, 247.

In that case the Iowa Court passed directly on this question, and say (page 247): "Now the requirement of the statute where the land is taxed to a particular person is that the notice shall be served on that particular person. Under that and the following section the power of the Treasurer in such cases to execute a deed is dependent upon the giving of the notice. Unless the notice has been served upon the person in whose name the land is taxed he is not authorized to execute the deed. The deeds in question then were executed without authority. They are not absolutely void it is

true; for they operated to transfer the title to the lands to the grantees. But they did not have the effect to terminate the right of redemption, and the title conveyed by them was subject to be defeated by the exercise of that right. (*Barnes* vs *Halleck*, ante 218.) And as long as a right to redeem the land exists there is no completed sale. And the settled rule is that until there is a completed sale the period of limitation provided by the statute does not begin to run. *Eldridge* vs. *Kucht*, 27 Iowa, 160; *Henderson* vs. *Oliver*, 28 Iowa, 26; *McCreary* vs. *Sexton*, 29 Iowa, 356."

The same doctrine is held in *Blackenstone* vs. *Sherwood*, 2 Pacific Rep. 875; *Moor* vs. *Brown*, 11 Howard U. S. 713 *et seq.*

The opinion in this latter case is so exhaustive and meets the point at issue so fairly that we ask the Court's careful perusal of it. See also *Slyfield* vs. *Healy*, 32 Fed. Rep. 2. This was a case in the Northern District of Iowa, and the Court held: "Section 902 of the Code of Iowa, providing that an action for the recovery of real estate sold for non-payment of taxes must be brought within five years from the execution of the Treasurer's deed cannot be set up as a defense to an action for redemption from a tax sale where notice of the expiration of the period of redemption has not been given to the actual owner of the land as required by section 894 of the Code."

Elsworth vs. *Van Ort*, 67 Iowa, 225;
Nelson vs. *Cent Land Co.* 35 Minn. 411;
English vs. *Williamson*, 8 Pac. Rep. 214;
Seaman vs. *Watson*, 20 N. W. Rep. 857.
Price vs. *England*, 109 Ills. 394;
Chapel vs. *Spire*, 106 Ills. 472;
Muller vs. *Jackson*, 40 N. W. 565;

4 McClain, Circuit Court, 211;
Gunzales vs. *Raple*, 24 Minn. 197;
Duncan vs. *Gillette*; 14 Pac. 479;
Mason vs. *Crowder*, 85 Mo. 526-32.

In *American Missionary Association* vs. *Smith*, 11 Northwestern Rep. 849, the Court says, speaking of this statute: "The statute requires the affidavit to be signed and verified by the holder of the certificate, his agent or attorney. This provision *is statutory and is imperative. Until the statute is complied with the statutory period for redemption cannot expire.*"

In 71 Iowa, 219, the Court says: "If however the notice to redeem required by the statute was not served, or if the proof of the service of the notice required by law was not on file in the Treasurer's office when the deed was executed *the land remained subject to redemption.*"

Halbrook vs. *Fellows*, 38 Ills. 440.
Barnard vs. *Hoyt*, 63 Ills. 341.
Gage vs. *Bailey*, 100 Ills. 530.
Williams vs. *Keith*, 22 Iowa, 523-524.

This question has recently been passed upon in in the Supreme Court of the United States in the case of Gage vs. Bani, the opinion in which case was handed down Oct. 26th, 1891, and is reported in Nos. 2 and 3, Vol. 12, Sup. Ct. Rep. As it is the latest decision upon the point here involved, and made by the highest judicial tribunal in the land, we may be pardoned for quoting from it somewhat at length.

The case came up on appeal from the Circuit Court of the Northern District of Illinois. Bani brought suit to set aside and declare void certain

tax deeds held by Gage, which deeds were executed under the Illinois statute requiring notice, which is similar to the Washington statute, and the alleged defect was not that *no* notice was given, as in the case here, but that a *defective* notice was given.

By the statute of Illinois in force when the sales were made upon which the tax deeds in question were based, it was among other things provided:

"SEC. 216. Hereafter no purchaser or assignee of such purchaser of any land, town or city lot, at any sale of lands or lots for taxes or special assessments due either to the State or any county or incorporated town or city within the same, or at any sale for taxes or levies or otherwise by the laws of this State, shall be entitled to a deed for the ands or lots so purchased until the following conditions have been complied with, to wit: Such purchaser or assignee shall serve or cause to be served a written or printed or partly written and partly printed notice of such purchase on every person in actual possession or occupancy of such land or lot, and also the person in whose name the same was taxed or specially assessed, if upon diligent inquiry he or she can be found in the county; also the owners of or parties interested in said land or lot, if they can upon diligent inquiry be found in the county—at least three months before the expiration of the time of redemption on such sale. In which notice he shall state when the he purchased the land or lot, in whose name taxed, the description of the land or lot he has purchased, for what year taxed, or especially assessed, and when the time of redemption will expire. If no person is in the actual possession or occupancy of such lot or land, and the person in whose name the same was taxed or es-

pecially assessed, upon diligent inquiry can not be found within the county, then such person or his assignee shall publish such notice in some newspaper printed in such county, and if no newspaper is printed in the county, then in the nearest newspaper that is published in the State to the county seat of the county in which such land or lot is situated, which notice shall be inserted three times, the first time not more than five months and the last time not less than three months before the time of redemption shall expire."

"SEC. 217. Every such purchaser or assignee by himself or agent shall, before he shall be entitled to a deed, make an affidavit of his having complied with the condition of the foregoing section, stating particularly the facts relied on as such compliance, which affidavit shall be delivered to the person authorized by law to execute such tax deed, and which shall by him be filed with the officer having custody of the record of the lands and lots sold for taxes, and entries of redemption in the county where such lands or lots shall lie, to be by such officer entered upon the records of his office, and carefully preserved among the files of his office, and which record or affidavit shall be *prima facie* evidence that such notice has been given. Any person swearing falsely in such affidavit shall be deemed guilty of perjury and punished accordingly."

"SEC. 219. At any time after the expiration of two years from the date of sale of any real estate for taxes or special assessments, if the same shall not have been redeemed, the County Clerk, on request and on the production of the certificate of purchase and upon compliance with the three preceding sections, shall execute and deliver to the purchaser, his heirs or assigns, a deed of conveyance of the real estate described in such certificate."

The similarity between the above sections and the statute of Washington on the subject of giving the Redemption Notice is apparent.

The Supreme Court, in deciding *Gage* vs. *Bani*, says (page 24 of opinion):

"It is not necessary to consider whether the defendant's plea was or was not sufficient; for the facts alleged in it, namely, the execution by the County Clerk to Gage of the tax deed of July 24, 1876, and the recording of that deed are restated and relied on in the answer; and no objection was made in the Court below to the answer upon the ground that it set up the same matter presented by the plea,

"In respect to that tax deed it appears that the sale upon which it was based was made August 29, 1873. Did Gage serve or cause to be served upon Caldwell notice of that sale as required by the statute?

"The notice presented to the County Clerk at the time of the application for a deed, and which Gage claimed was served August 14, 1874, upon Caldwell personally, was as follows;

'To whom it may concern: This is to notify you that on the 29th day of August, 1873, Henry H. Gage purchased, and afterwards assigned the certificate of purchase to the undersigned, at a sale of lots and lands for taxes and special assessments authorized by the laws of the State of Illinois, the following described real estate taxed in the name of Peter Caldwell, to wit: [Here follows a description of various lots including those here in dispute.] Said taxes and special assessments were levied for the year 1872, and that the time of redemption thereof, from said sale, will expire on the 29th day of August, 1875.

ASHAEL GAGE.'

"*It is plain in the face of the statute that a purchaser at a sale for taxes or special assessment is not entitled to a deed until the conditions prescribed by Sec. 216 are met;* one of these conditions being that the notice required to be served by the purchaser or his assignee on every person in actual possession or occupancy of the land or lot sold, and upon the person in whose name the same was taxed or specially assessed, if upon diligent inquiry he can be found in the county, "shall state when he purchased the land or lot, in whose name taxed, the description of the land or lot he has purchased, for what year taxed or especially assessed, and when the time of redemption will expire." The notice that Gage claimed was served on Caldwell is radically defective, in that it did not show whether the sale was for taxes or special assessments. It stated that the sale of 1873 was 'for taxes and special assessments.' This precise question has been determined by the Supreme Court of Illinois. In *Gage* vs. *Waterman*, 121 Ills. 115–118, 13 N. E. Rep. 543, the Court said: 'It might be of consequence to the land owner to know whether his property was sold for a tax or special assessment. This notice did not afford that information.' In *Stillwell* vs. *Bromwell*, 124 Ills. 338–345, 16 N. E. Rep., 226, the notice was of a 'sale of lands, town and city lots, made parsuant to law. * * * for the delinquent taxes and special assessments levied for the year 1880.' The Court held this notice to be materially defective, saying: 'There is a difference between a tax and a special assessment. The notice above quoted fails to inform the land owner whether his property was sold for a tax or special assessment. It was therefore defective under the ruling made in *Gage* vs *Waterman*, 121 Ills. 115, 13 N. E. Rep. 543. The title to be made under a tax deed is one *stricti juris*.'

"So in *Gage* vs. *Davis*, 129 Ills. 236–239, 21 N. E. Rep. 788, where one of the questions was as to the validity of a notice given by the assignee of a purchaser 'at a sale of lots and lands for taxes and special assessments authorized by the laws of the State of Illinois * * * said taxes and assessments were levied for the year 1872,' the Court said :

'The notice above quoted fails to state whether the lots were taxed or specially assessed. It does not inform the owner whether his lots were sold for a tax or special assessment. It merely tells him that his lots were sold at a general sale of lots and lands for taxes and special assessments levied for the year 1872. The words, 'said taxes and special assessments were levied for the year 1872,' refer back to and define the sale at which the lots in question were sold, but such words cannot be construed to mean that the lots were sold on September 13, 1872, for both taxes and special assessments.'

"This view is not at all affected by section 224 of the above statute, declaring that deeds executed by the County Clerk shall be *prima facie* evidence in all controversies and suits in relation to the right of the purchaser, his heirs or assigns, of the following facts:

'That the real estate conveyed was subject to taxation at the time it was assessed, and had been listed and assessed at the time und in the manner provided by law ; that the taxes or special assessments were not paid before the sale; that the estate conveyed had not been redeemed at the date of the deed, was advertised for sale in the manner and for the length of time required and sold for taxes or special assessments as stated in the deed ; that the grantee was the purchaser or assignee of the purchaser ; and that the sale was conducted in the manner required by law.'

"It has been uniformly held, notwithstanding this section, that when a tax deed is relied upon as evidence of a paramount title *it is indispensible that it be supported by a valid judgment for the taxes, and a proper precept authorizing the sale.*

Holbrook vs. *Dickinson*, 46 Ills. 285;
Gage vs. *Lightburn*, 93 Ills. 248–252;
Partridge vs. *Village of Hyde Park*, 131 Ills. 537–541, 23 N. E. Rep. 345.

"So it must appear that the purchaser at the tax sale, or his assignee, made the affidavit required by section 217 as to the service of notice of the tax sale.

Gage vs. *Carraher*, 125 Ills. 447, 454; 17 N. E. Rep. 777.

"And when the notice is produced the question is necessarily open as to whether it was such as Sec. 216 prescribed, before the purchaser is entitled to a deed from the County Clerk. The settled doctrine of the Supreme Court of Illinois, is that a tax title is purely technical and depends upon a strict compliance with the statute.

Altes vs. *Hinckler*, 36 Ills. 265, 267;
Marsh vs. *Chesnuf*, 14 Ills., 223;
Charles vs. *Waugh*, 35 Ills., 315–323;
Wisner vs. *Chamberlin*, 117 Ills. 568–580, 7 N. E. Rep. 68;
Chappel vs. *Spire*, 106 Ills., 472–475;
Stillwell vs. *Brammell*, 124 Ills. 338–345, 16 N. E. Rep. 226.

"It is as firmly settled that the giving of the particular notice required is an indispensible con-

dition precedent to the right to make a deed to the purchaser or assignee.

Gage vs. *Baily*, 109 Ills., 530, 536;
Gage vs. *Schmidt*, 104 Ills., 106, 109;
Gage vs. *Hervey*, 111 Ills., 305–308;
Gage vs. *Mayer*, 117 Ills., 632–636, 7 N. E. Rep. 97.

"As the notice of sale of 1873 was not in conformity with the statute, Gage was not entitled to the deed of July 24th, 1876, *and it is void.*"

(Objection No. 3.)

The third objection to this deed is that it is void upon its face because not executed in the name of the Territory of Washington.

Code of Washington, 1881, sec. 2934.
Edgerton vs. *Bird*, 6 Wis. 527,
Woodman vs, *Clapp*, 21 Wis. 462.
Lindsley vs. *Jay*, 25 Wis. 462.

This deed is made not in the name of the Ter ritory but in the name of the Sheriff.

Stinchfield vs. *Little*, 10 A. D. 65.
McDonald vs. *Friendly*, 2 Mo. 218.
Ruggles vs. *Was. Co.* 3 Mo. 501.

If the deed is void upon its face it does not operate to set the statute of limitation in motion.

Redfield vs. *Parks*, 132 U. S. 239.
Moore vs. *Brown*, 11 How. 414.
Waterson vs. *Drove*, 18 Kan. 223.
Hafford vs. *McKinna*, 23 Fed. Rep. 36.
Daniels vs. *Case*, 45 Fed. Rep. 843.

Gomer vs. *Chaffee*, 6 Colorado, 314.
Sheehey vs. *Hinds*, 27 Minn. 259.
Mason vs. *Gorman*, 85 Mo. 526.
Richards vs. Thompson, 23 Pac. Rep. 106.
Innis vs. *Drexel*, 78 Iowa, 255.
Wagoner vs. *Mann*, 48 N. W. Rep. 1065.

If the deed is wrongly issued, or void for any reason *not* appearing on its face, it does not set the statute of limitation in motion.

Bird vs. *Brisner*, 28 Pac. Rep. 371.
Early vs. *Whittenham*, 43 Iowa, 162.
Bird vs. *Bensili*, 12 Sup. Ct. Rep. 328.

The point was suggested on the hearing that the purchaser under the law of 1881 might have some vested right which could not be taken away by the law of 1886.

In reply to this suggestion we claim that the law of 1886 does not take away anything which the purchaser had before. If it repealed absolutely the section providing for executing the deed and substituted nothing in its place, the question of the purchaser's vested right might arise after the three years expired, to wit: after May 7, 1886. It could not arise before that beuause he had no right to a deed in any event until May 7, 1886. But this section does not repeal the act of 1881 without providing for a substitute. The law of 1886 is as full as that of 1881 and more complete. It does not affect any *right*, but goes to the remedy merely. The theory upon which the law proceeds in divesting the citizen of his property for nonpayment of taxes is that he has been notified, and after being notified neglects a plain provision of the law made as a matter of public benefit and necessity. The presumption that he

knows that he must pay taxes and should therefore pay without further notice is never held sufficient. For this reason, in all tax laws provision is made for publishing a delinquent tax list.

This is *notice* to the owner of his right still to redeem. It *affects his remedy*, not any *right* of the purchaser. It concerns only the evidence, and upon whom the burden of proof rests. The purchasers *right* is only to get a deed at the end of the three years. Following out the principle then that the owner must, if possible, be notified of his delinquency before the extreme measures of confiscation of property is resorted to against him, the legislature of 1886 provided that he must be again notified, and this time not by the sheriff but by the purchaser. The purchaser is not deprived of any right and the time to redeem is not extended. The law simply says to the purchaser:— The only theory upon which we can proceed to give you this property is that the taxes were duly levied upon it, and that the owner after being notified refused to pay or redeem. Satisfy us that you have *notified* him and you may have your deed. This does not impair the obligation of any contract and is not obnoxious to the objection that it takes away any vested right of the purchaser. This point was passed upon directly in *Strode* vs. *Waschcr*, 17 Oregon *supra*. In that case the deed was executed December 14th, 1886, sale was made June 18th, 1884, for taxes of 1883. Complaint in ejectment was filed March 17th, 1887. The law of Oregon was amended February 21st, 1887. By the amendment the conclusions of the statute were abolished and plaintiff in ejectment was permitted to attack the deed *in any* case by tendering in open Court the amount of the taxes, costs, &c.

Surely this was a much more radical change in the law than the one under consideration, and it

was made two months *after* the deed to the purchaser was made.

The Supreme Court of Oregon, held that the law of Oregon was constitutional and that no vested right was disturbed. We quote from page 59 of the opinion where the Court in answer to the very proposition made here by the defendant says :

" What obligation there is in favor of the purchaser to maintain such a rule of evidence is more than I can conceive. He is deprived of no legitimate right in consequence of the change. If the power has been duly exercised his title to the property is assured. *If on the other hand the conditions upon which it was authorized to be exercised have not been performed he has no right to it.*

The change in the law has removed a barrier the Legislature interposed against a full inquiry into the matter, and I do not think it has the effect to impair the obligation of any contract although it has modified the former rule of evidence on that subject."

If this decision is good law in a case where the act of the Legislature was passed not only after a *right* to a deed had enured by reason of the lapse of time to the purchaser, but after the deed was actually executed to the purchaser, *a fortiori* should it be unanswerable in the present case.

In *Hinckle* vs. *Tallman,* 38 Barb, 608, this question was directly passed upon.

The Statute of 1850 provided that the tax deed should be presumptive evidence of the regularity of all proceedings, &c., and adds " *But such presumption may be rebutted by legal evidence.*"

This act was repealed in 1855. The repealing act not only repeals the act of 1850, but it makes

provision as to the effect of such deeds thereafter executed as evidence (page 611). Such is the case here exactly. The deed in that case was executed *before the passage of the act of 1855.*

The Court in that case, after stating and comparing the claims of the different parties, takes up the question suggested there as here of the vested *right* of the purchaser, and says (page 613): "There is no shadow of ground for holding the grantee in a deed from the Controller, of land sold for taxes after the passage of the act of 1850, to have a vested right to the presumption provided for by that statute. The clause of the statute was remedial merely, and there is no reason why such statutes may not be repealed by the Legislature."

The Court further says (page 616):

"For these reasons I think the referee was right in holding the deed not evidence of the regularity of the proceedings to levy or collect the tax."

This case is far stronger against defendant's contention than the one at bar. In *Greenwood* vs. *Adams*, speaking of the rights acquired by purchasers at tax sales, the Supreme Court of California (21st Pacific Reporter, p. 1135), says: "But it is urged that this and all the other rulings complained of were erroneous because when defendant purchased the land at the tax sale the lien of the State vested in them, and could only be divested by a repayment of the purchase money, and that they were entitled to have the amount so paid out repaid before any decree could be entered against them. We fail to see any force in this point. Parties who purchase property at tax sales acquire the title to the property if all the proceed-

ings for the levy of the taxes and the sale are regular and in strict conformity to law. *But if not so they acquire no rights which either a Court of law or equity can enforce.*"

In Iowa it is held that the Legislature *after* the taxes have been assessed and become delinquent, may shorten the time of redemption from five to three years.

In *Negus* vs. *Yancy and Smith*, 22 Iowa, p. 59, the Court says:

"*The competency of the legislature to change and modify at all times the provisions of its revenue laws is too clear to be questioned.* If this change should impose new terms and conditions in the collection of the taxes already delinquent, upon what ground can the defaulting tax payer complain? He has no vested rights or privileges in the terms or provisions of the law under which he is a defaulter."

The authorities seem to be uniform that after sale and before deed the tax purchaser has no title, and, at most, only a lien for the amount of the tax.

Bracket vs. *Gilmore*, 15 Minn. 245;
Blackwell on Tax Titles Sec., 957.

In *Gage* vs. *Stewart*, 127 Ill. 227; 11 Am. St. Rep. 116, it is held:

"A statute declaring that thereafter no purchaser at a tax sale shall be entitled to a deed unless he has complied with certain conditions designated in such statute, applies to sales previously made for which no deed has issued and for which the land-owner yet retains the right of re-

demption. Such statute is not retrospective, for it relates exclusively to acts to be performed after its passage. Neither is it void, as impairing the obligation of a contract."

It may be conceded that some State decisions can be cited holding that a statute, such as the one under consideration would be unconstitutional and subject to being attacked as inhibited by the provisions of the Constitution of the United States, providing that the property of the citizens shall not be taken without due process of law. But we imagine *no* Federal decision can be found so holding. This being a Federal question the Federal Courts, not the State Courts, declare the law.

It is unnecessary now to cite the Court to authorities to show that in proceedings of this nature where property is taken by virtue of a statute, the statute must be strictly followed. The rule is elementary and fortified by an unbroken line of decisions beginning with the first printed opinion. In the case at bar it is not pretended that even an attempt was made to follow the statute. Defendant stubbornly seizes upon one section of the statute, and, throwing it forward as a shield, refuses to submit to any investigation, and defiantly stands in the shadow of its protection.

If the intelligent reasoning of the many able Courts which we have quoted above should break down this shield and leave him unprotected, he cannot be heard to complain. He has appealed to the letter, not the spirit, of the law. He has asked for his bond and he shall have it. The law which he has sought to warp to his own advantage is not a new one; and if the decisions of State and Federal Courts alike, delivered by Judges who have been an ornament to the Bench and a

guide to the Bar, which we invoke to our aid, shall control this Court, defendant may at least have the satisfaction of knowing that there never was any equity in his claim and that the law still leaves him a remedy fully adequate to make him whole.

All of which is respectfully submitted for the consideration of the Honorable Court.

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